

Docket No.: 068911-0160

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOHN G. BABISH

CUSTOMER NO.: 23,630

APPL. NO. : 10/590,424

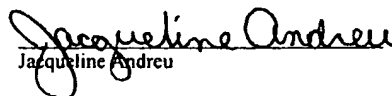
CONFIRMATION NO.: 7031

FILED : APRIL 2, 2007
TITLE : SYNERGISTIC ANTI-
INFLAMMATORY
PHARMACEUTICAL
COMPOSITIONS AND RELATED
METHODS USING
CURCUMINOIDS OR
METHYLYXANTHINES

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Mail Stop: Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted (571) 273-8300 or filed online via EFS-Web to the USPTO, on the date indicated below.

Date: October 7, 2011


Jacqueline Andreu

GRP./A.U. : 1627

EXAMINER: : KENDRA D. CARTER

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW
THE HOLDING OF ABANDONMENT UNDER 37 CFR § 1.181 (a)

OR IN THE ALTERNATIVE

PETITION TO REVIVE UNDER 37 CFR 1.137(b)

Dear Sir:

Pursuant to 37 CFR § 1.181 (a), the Applicants petition the Office to withdraw the holding of abandonment in the above-identified application for the reasons stated below.

As indicated in the Notice of Abandonment mailed September 19, 2011 (Exhibit A), the above-identified application was held to be abandoned on the ground that the Applicants allegedly failed to timely file corrected drawings as required by the Notice of Allowability. The Applicants respectfully traverse.

12/05/2011 CKHLOK 00000014 501133 10590424
01 FC:1453 1860.00 DA

The Applicants received two Notices of Allowability in this application, one mailed on June 02, 2011 ("the first Notice") (Exhibit B) and another mailed on July 27, 2011 ("the second Notice") (Exhibit C).

The first Notice had the box in paragraph 5 checked, stating that "CORRECTED DRAWINGS (as "replacement sheets") must be submitted." The box in paragraph 5(b) was also checked, which stated "including changes required by the attached Examiner's Amendment/ Comment or in the Office Action of Paper No./Mail Date 20110307." See the first Notice in Exhibit B, first page, (emphasis in original).

However, neither the Examiner's Amendment nor the Office Action of Mail Date 20110307 required the Applicants to make any changes to the drawings or submit corrected drawings or made any reference to the drawings. In fact, no Office Action with a Mail Date of 20110307 was issued in this application. See Exhibit D for a copy of the image file wrapper as available on USPTO's PAIR system. The Examiner's Amendment merely stated that the Examiner had obtained authorization from the Applicant's agent, Atabak Royae, on March 7, 2011, to amend Figure 3 and that the application had "been amended" for that figure. See pages 2-3 of the first Notice in Exhibit B. The Examiner did not require the Applicants to make any changes to Figure 3 or submit a corrected drawing for Figure 3. Only in the event that the changes were deemed unacceptable, had the Examiner urged the Applicants to file an amendment under 37 CFR 1.312. See page 2, first paragraph, of the First Notice in Exhibit B.

The second Notice issued subsequent to a proposed Examiner's Amendment discussed with the Applicants' attorney, Judith Toffenetti, via phone on July 18, 2011. See Exhibit C. The first page of the second Notice, however, had no check mark in the paragraph 5 box for "CORRECTED DRAWINGS (as "replacement sheets") must be submitted," which indicated to the Applicants that the Office had withdrawn its prior requirement for submission of corrected drawings. Therefore, the Applicants paid the issue fee on August 25, 2011 without submitting any corrected drawings.

For the above reasons, the Applicants respectfully submit that they were either not required to submit corrected drawings or if they were, their alleged failure to submit corrected drawings was through the fault of the Patent Office. The Applicants respectfully petition the Office pursuant to 37 CFR § 1.181 to withdraw the holding of abandonment in this application and allow the application to proceed to issuance.

In the event a reply to the first Notice is still needed for publication of the patent in this case, without admitting any facts and solely to expedite the issuance of the patent in this case, the Applicants submit herewith a replacement sheet for corrected Figure 3 (Exhibit E).

In the alternative, and to the extent the above petition to withdraw the holding of abandonment is not granted, the Applicants petition the Office to revive the above referenced application pursuant to 37 CFR § 1.137(b). In this regard, the Applicants respectfully submit that:

(1) it was not the Applicants' intention to abandon the above-identified application as evidenced by the Applicants having paid the issue fee within the time limit set forth by the Office, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b) was unintentional; and

(2) a replacement sheet for corrected Figure 3 in connection to the first Notice is being filed herewith in Exhibit E.

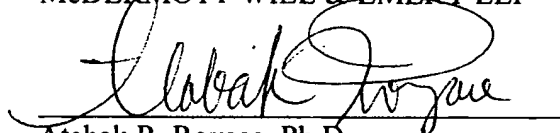
The Director of the Patent and Trademark Office is authorized to charge the petition fee as set forth in 37 CFR § 1.17(m) to Deposit Account No. 50-1133.

The Applicants respectfully submit that the issue fee in the application has previously been paid on August 25, 2011. As such, the Applicants respectfully petition the Office to revive this application and allow it proceed to issuance.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. The commissioner is hereby authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1133 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in cursive script, appearing to read 'Atabak Royace', is written over a horizontal line.

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Date: October 7, 2011

**Please recognize our Customer No. 23,630
as our correspondence address.**